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ABSTRACT

The Parental Choice in Education Initiative was defeated by California voters in a statewide special election in November 1993. The stated purpose of the initiative was to enable parents to choose their children's schools. This document summarizes the provisions of the initiative, analyzes its policy and fiscal impact, and reviews supporting and opposing arguments. Legal issues and the roles of the legislature, school districts, and state board in implementation of the initiative are also examined. Proponents of the voucher initiative argue that it reduces the ills of monopoly; creates healthy competition; promotes economic equality; eliminates double payments (of tuition and taxes); reduces the burden on private schools; establishes a simple funding scheme; and encourages private innovation and diversity. Opponents charge that the initiative undermines the public school system; may discriminate in admission policies; provides inferior services in low-income areas; unfairly benefits the wealthy; facilitates state support for religious instruction; increases costs to an unknown degree; and does not assign administrative and fiscal accountability. Lists of supporters and opponents are included. (LMI)

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ANALYSIS OF THE PARENTAL CHOICE IN EDUCATION INITIATIVE

California Senate Office of Research

July 1993

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Analysis of the Parental Choice in Education Initiative

A Proposed Constitutional Amendment
on the November 2, 1993, Ballot

Prepared by Kim Connor and Melinda Melendez

Senate Office of Research
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ANALYSIS OF PARENTAL CHOICE IN EDUCATION INITIATIVE

Introduction

The Parental Choice in Education Initiative has qualified for the ballot in California and is set for a statewide special election on November 2, 1993. If passed by the voters, the initiative would amend the California Constitution by adding a new Section 17 entitled the "Parental Choice in Education Amendment" to Article IX. The stated purposes of the initiative include enabling parents "to determine which schools best meet their children's needs" and "empowering parents to send their children to such schools." This report summarizes the provisions of the initiative, analyzes their policy and fiscal impact, and reviews support and opposition arguments.

The initiative contains specific provisions addressing many aspects of implementation, and is silent on many others. This analysis indicates those areas in which there is no specific requirement or guideline, and raises questions which will need to be addressed in subsequent action by the Legislature if the initiative passes. Recognizing that the Legislature passed legislation to clarify sections of Proposition 98 (1988), the initiative provides that "the Legislature shall implement this section through legislation consistent with the purposes and provisions of this section."

Summary of Key Provisions

The Parental Choice in Education Initiative proposes major changes in state educational policy and financing to allow parents to exercise choice in the schools which their children attend. It would provide state educational "scholarships," or vouchers, for California students that would be redeemable by their parents at either private or public scholarship-redeeming schools. The amount of the scholarship would be equal to at least 50 percent of the prior year's public per-pupil spending, and is estimated at approximately $2,500 per student.

The initiative allows student scholarships to be supplemented by any source, public or private, which would include a child's parents. If tuition costs exceed the scholarship amount, parents would be permitted to supplement their child's scholarship.

Beginning with the 1993-94 fiscal year, every resident school-age child who was not enrolled in private schools on October 1,

1991, would be eligible to receive a scholarship. The initiative would prohibit students enrolled in private schools on that date from receiving scholarships until fiscal year 1995-96.

Scholarships would be considered "grants of aid [designated as nontaxable income] to children through their parents and not to the schools in which the children are enrolled." Once parents designate their child's scholarship-redeeming school, scholarships would be disbursed by the state directly to the scholarship-redeeming school as credit toward the parents' account. If the scholarship amount exceeds the charges of the scholarship-redeeming school, the excess funds would be set aside for the student by the state in a trust. The trust could be used for later application toward charges at any scholarship-redeeming school or to pay for the student's higher education until age 26.

Private schools with at least 25 students would be eligible to become scholarship-redeeming schools if they met the requirements of the initiative and the legal requirements that applied to private schools on October 1, 1991, and filed a statement with the state Board of Education indicating this.

The initiative would prohibit a school from redeeming scholarships if the school practices specific forms of discrimination, advocates unlawful behavior, teaches hatred, or provides false information about itself. It would allow all schools, private and public, to establish a code of conduct, enforced with sanctions, that would permit schools to dismiss students if they were not progressing academically or were misbehaving.

The Legislature would be required to establish a system which would allow public schools to convert to independent scholarship-redeeming schools. These schools would operate under laws that are no more restrictive than those applied to private schools. The employees of those schools would be permitted to continue and transfer their pension and health care benefits as long as they are employed by any scholarship-redeeming school.

The initiative would require that student enrollment systems within school districts be based primarily on parental preference. Public schools which choose not to be scholarship-redeeming schools would be required to open their enrollment capacity to children who may or may not be residents of their districts after first completing district enrollment assignments based primarily on parental choice.

MAJOR POLICY EFFECTS OF THE INITIATIVE

Public Financing of Private Schools

The initiative would create private scholarship-redeeming schools, supported with public funds. No other state in the nation has such an extensive system of publicly funded schools of choice as would be established in California.

The initiative would allow state scholarship funds to be used in financing the education of students at private schools, including religious private schools, that qualify as scholarship-redeeming schools. Currently, the California Constitution prohibits the appropriation of public funds for religious schools.

Receipt of Scholarships by Private School Students

Estimates of the numbers of private school students who will be eligible for and who will choose to redeem a scholarship or voucher vary widely. The California Department of Education estimates are used in this analysis.

Immediately after the passage of the initiative, the state would be required to provide scholarships or vouchers to students who choose to move from public schools to private scholarship-redeeming schools (estimated by the California Department of Education at 104,000 students or 2 percent of enrollment), and to private school students who are newly enrolled in scholarship-redeeming schools and were not enrolled in private schools on October 1, 1991 (estimated by the Department of Education at 84,000 students at a minimum the first year). Even though the initiative would allow public school students to move to private schools in 1993-94, the actual number of students claiming scholarships will depend on the availability of space in private schools. (See Student Access to Scholarship Schools on page 5.)

The initiative prevents students who were enrolled in private schools as of October 1, 1991, from receiving scholarships until 1995-96. At that time, the state would be required to provide scholarships to those private school students still enrolled in scholarship-redeeming schools. Approximately 545,000 students attended private schools in California in 1991-92. Some private school students will have graduated and some students will attend non-scholarship-redeeming schools, but it is possible that 538,000 students currently in private schools could be eligible for scholarships in 1995-96.

Presumably, most private schools would convert to scholarship-redeeming schools since the requirements would be virtually the same. Small private schools with less than 25 students would be excluded "unless the Legislature provides otherwise," although it is assumed some will reorganize to serve 25 students. Home schooling, as currently constituted, would be precluded from eligibility because of the minimum of 25 pupils, unless this provision is changed by the Legislature.

Conversion of Public Schools to Scholarship-Redeeming Schools

The initiative directs the Legislature to establish an "expeditious process" for converting public schools to independent scholarship-redeeming schools. These schools would then operate under laws and regulations no more restrictive than those which apply to private schools. It appears that any public school could become a scholarship-redeeming school, although the initiative leaves unspecified how these schools would be funded. Nothing in the initiative prohibits these schools from redeeming vouchers in addition to receiving regular public school funding.

Public schools that convert to scholarship-redeeming schools would be required to permit employees to continue to retain their pension and health care benefits as long as they remain employed by any scholarship-redeeming school.

The question of ownership of the school building for a converted school is an issue not addressed in the initiative, but one that could be further clarified by the Legislature. Also unaddressed is the issue of who makes the decision about converting a public school (local school board, etc.). The initiative does not allow any school to be compelled to become or to be prevented from becoming a scholarship-redeeming school if it meets the requirements of the initiative.

Public School Open Enrollment

A far-reaching provision of the initiative is that all public schools would be required to implement open enrollment policies based primarily upon parental choice. Local school boards would be required to establish a mechanism consistent with federal law to "allocate enrollment capacity based primarily on parental choice." The establishment of racially segregated schools would be prohibited by requiring schools to operate consistent with federal law.

Schools would be required to offer district residents their choice of placement first, then offer any remaining space to other pupils, regardless of residence. The initiative does not require private schools to fall under this open enrollment policy.

Higher Education Scholarship Credits Up to Age 26

The initiative establishes a new policy for higher education by providing partial higher education vouchers. Any "surplus" value of a pupil's scholarship (the amount by which the scholarship exceeds the tuition charged by a scholarship-redeeming school) could be set aside by the state and applied to future tuition charges at any scholarship-redeeming school or to pay for the child's higher education at a public or private college. The state currently has no such program of higher education vouchers.

Current law does not establish a maximum age for students. The initiative would allow scholarship assistance for students up until age 26; it is possible that students may be served in scholarship-redeeming schools until that age. This is an issue which could be clarified by the Legislature if it specifies the provisions under which a student may be served until age 26. For example, the Legislature could require that, after a specific age, students receiving vouchers may only be enrolled in institutions of higher education. The Legislature could establish a means to keep track of the "scholarship credits" and any surplus unused by the student. Any surplus remaining in trust on the student's 26th birthday would revert to the state and would be unavailable for use by that student.

Student Access to Scholarship Schools

Although the initiative mandates open enrollment in all public schools to enable parental choice, it contains no requirement that private schools have open enrollment policies. In practice, access to scholarship-redeeming schools would probably be limited by several factors, with limitations on available slots being the primary factor.

A recent (February 1993) survey of California private schools likely to become scholarship-redeeming schools conducted by Southwest Regional Laboratory (SWRL), a regional research institute based in Orange County, found that these schools are not poised to accommodate many transfers from public schools. Forty percent of such "voucher-receptive" private schools report operating at near peak capacity (95 percent or higher); over 70

percent are operating at more than 85 percent capacity. SWRL's estimates are that only about 43,000 public school students, or fewer than 1 percent of California's public school enrollment, can expect to find spaces in private schools.

Additional spaces may become available upon high demand through reopening of closed parochial schools, reconverted classroom space, or construction of new private schools, making room for an additional 100,000 students, or a total space availability for 6 percent of the public school students in California, but this would not occur immediately.

Another factor limiting access to private schools would most likely continue to be their selection criteria. The SWRL survey found that most "voucher-receptive" schools (76 percent) require students to demonstrate grade-level achievement prior to admission. Most expect no change in their academic admissions criteria if the initiative passes.

The initiative specifically prohibits the redemption of scholarships by any school which discriminates on the basis of race, ethnicity, color, or national origin. The Legislature would have to provide for enforcement of this anti-discrimination policy, possibly through legislation.

The initiative contains no prohibition against discrimination based on religion, disability, or gender. The lack of such a prohibition would not automatically trigger discrimination, but, if it occurred, could raise an issue of conflict with state and federal law, such as the Civil Rights Act and Government Code Section 11135, which curtails state funding to any grantee that discriminates on the basis of ethnic group identification, religion, sex, color, or mental or physical disability. The initiative would not prohibit scholarship-redeeming schools from excluding students whose disability, as defined by the federal Individuals with Educational Disabilities Act and Section 504 of the Rehabilitation Act, makes academic achievement difficult or slow, but it does not change current legal or statutory protections which already exist.

Both public and private schools would be allowed to establish a code of conduct, enforced by sanctions, which would permit those schools to dismiss students who are "deriving no substantial academic benefit" or who are "responsible for serious or habitual misconduct related to the school."

Equity Issues Related to Scholarships

The initiative requires that the value of the scholarship for each child be at least 50 percent of the prior year's public per-pupil spending, or approximately $2,500. The Legislature would determine that value, which would be the same for all scholarships at a given grade level. The value could be adjusted by grade level to accommodate varying costs, such as higher costs for secondary grades.

Parents would be able to supplement the scholarship with their own funds in order to pay the tuition costs of schools exceeding the voucher amount. Higher-income families would no doubt be able to afford more expensive private schools, while lower-income families would be limited by the amount of the voucher. The initiative does not specify any priority for low-income students for either receipt of scholarships or placement in scholarship-redeeming schools.

The SWRL survey of "voucher-receptive" private schools found that 58 percent of those schools charge less than $2,600 per year, which would make them affordable if the scholarship approaches that amount. Most of those schools (94 percent) are Catholic elementary schools, while only 41 percent of the Catholic "voucher-receptive" high schools charge less than $2,600 tuition. The same survey also found that only a small percentage (4 percent) of the "voucher-receptive" schools expect to raise their tuition by a large amount if the initiative were to pass. Forty-four percent anticipate no increase and 32 percent expect a small increase.

The scholarship amount does not take into account the higher costs of educating some students, especially disabled students. In selecting a private education, parents of disabled students could be charged higher tuition to cover the costs of additional educational support services their children may need in order to benefit from instruction. These parents might not have equal access to scholarship-redeeming schools if tuition for their children's education far exceeds the amount of the scholarship.

The initiative states that "nothing in this section shall prevent the use in any school of supplemental assistance from any source, public or private." If private scholarship-redeeming schools chose to receive supplemental assistance in the form of federal funds, they would have to comply with any federal laws and regulations attached to the receipt of federal funds.

The initiative allows the Legislature to award "supplemental funds for reasonable transportation needs" for low-income students and for "special needs attributable to physical impairment or learning disability." Presumably the latter would be used for educational support services and transportation for "special needs" students.

The supplemental funds allowed by the initiative are permissive, not required. Some believe that many students who might require additional services in order to attend school may not be eligible for supplemental funds. For example, in permitting funds for the special needs of students with physical impairments or learning disabilities, the initiative includes only two of the 13 disability categories defined by federal law. The initiative omits any reference to the 11 other categories. Although not specifically referenced, it can be argued that the other categories still trigger eligibility for appropriate services under federal law.

The complete list of categories includes "those children evaluated ... as being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or as having specific learning disabilities, who because of those impairments need special education and related services." Later amendments added "autism" and "traumatic brain injury" to the federal categories. In addition, the initiative does not mention supplemental grants for other students with special needs, such as limited-English-proficient students, but this could be provided by the Legislature.

Regulation of Private Schools and Scholarship-Redeeming Schools

The initiative restricts the state regulation of all private schools, including scholarship-redeeming schools, to only that regulation which applied to private schools on October 1, 1991. New regulations for private schools beyond those in existence on that date would require a three-fourths vote of the Legislature.

The initiative imposes two major restrictions on cities, counties, local districts and other subdivisions of the state in enacting local health, safety and land-use regulations affecting schools:

- Such regulation may be passed only by a two-thirds vote of the local governing body and a majority vote of the jurisdiction's qualified electors (defined as all registered voters, not a majority of those electors voting).

- In any legal challenge to such a regulation, the issuing governmental body would have the burden of proving that the regulation is essential and would not unduly restrict private schools or their parents.

Currently, private schools operate relatively free of regulation in comparison to public schools, although some choose to comply with many requirements which apply to public schools. For example, private school teachers are not required by law to be credentialed, and this would not be changed by the initiative.

The initiative does allow the Legislature to pass legislation (by a majority vote) to prevent fraud or the employment of felons or persons convicted of child abuse. Such statutory protection already exists for public school students. California Catholic school superintendents have indicated that, pursuant to 1984 legislation, all of their school employees who have contact with minor children are required, as a condition of employment, to submit fingerprints and to undergo a criminal clearance investigation by the state Department of Justice and the Federal Bureau of Investigation.

Other areas in which private schools are not regulated include fiscal accountability and reporting requirements regarding student achievement, dropouts, and graduation rates. Although there are no state curricular standards for private schools, Catholic school representatives indicate that they follow the Education Code requirements for a diploma of graduation, and have graduation requirements in excess of those mandated by law. It is unclear whether other private schools abide by these state requirements.

FISCAL IMPACT OF THE INITIATIVE

Factors Affecting Fiscal Impact

The initiative's total fiscal impact would depend on several unknown factors, including:

- The number of public school students who choose to and are able to leave and attend private schools.
- The ability of private schools to expand their available space for new students through construction or other means.
- The number of private school students whose parents choose to redeem their scholarships.
- The amount of funding provided by the Legislature for any provision of this initiative and the amount of savings which the Legislature may redirect to K-12 education.
- The amount of categorical aid for transportation, special education, or other special needs that may need to be reallocated or newly appropriated by the Legislature for students in scholarship-redeeming schools, and
- The number of scholarships reallocated to institutions of higher education for students for whom these funds have been set aside by the state in trust.

The initiative has one impact on state costs and another, different impact on public school funding because of Proposition 98, approved in 1988 to provide minimum spending guarantees for California's public schools. If only state costs were considered, one could argue that the initiative could save the state billions of dollars by serving students in private schools with vouchers that are half of current public school costs. The potential impact on public school funding is expected to be far greater than the cost of the scholarships alone, however, because of the specific wording of the initiative and its interaction with Proposition 98. In other words, state support for public schools could be reduced by a complex combination of effects on state funding formulas of public students leaving and private students claiming scholarships.

An analysis by the Department of Education indicates that "the legislature generally treats the 'minimum' guarantee of Proposition 98 as though it was also a maximum limit on appropriations, and this observation is important to fully appreciating the interaction of the two initiatives." If the Legislature chose to provide additional funds for education beyond that minimally required by Proposition 98, the fiscal impact of the initiative would be significantly reduced.

Summary of Fiscal Impact

According to the California Department of Education, assuming a K-12 enrollment of 5,195,777 students and public school expenses of $4,994 per pupil or $25,946,271,000 in 1992-93, the minimum scholarship amount would equal $2,497 per student.

In 1993-94, if the initiative passes, scholarships would need to be provided to students who choose to move from public schools to private scholarship-redeeming schools and to private school students who are newly enrolled in scholarship-redeeming schools and were not enrolled in private schools on October 1, 1991. Estimates by the Department of Education of the number of potentially eligible public school students range from 104,000 (or 2 percent of current public school enrollment) to 519,000 (10 percent of enrollment). Given the constraints of available space, the 2 percent estimate appears more realistic and will be used in this analysis.

The number of private school students eligible for scholarships in the first year of the initiative's passage could be approximately 84,000, according to estimates by the California Department of Education. In total, 188,000 (104,000 + 84,000) scholarships of $2,500 could be required in 1993-94, for a total scholarship cost of $470 million.

The initiative specifies how to treat scholarship expenditures, scholarship savings, and students enrolled in scholarship schools under Proposition 98. Such treatment has a significant effect on the level of state funding for K-12 education required under the Proposition 98 minimum guarantee and on new expenditures under Proposition 98.

Every time a student leaves the public schools to attend a scholarship-redeeming school, thus claiming a scholarship or voucher, the Department of Education calculates that public school (Proposition 98) funding would be reduced by not only the

scholarship amount ($2,497) but also by the amount of "scholarship savings" (the difference between scholarship costs and the defined per-pupil expense, or another $2,497) and by the per-pupil amount generated by each student under Proposition 98 ($4,571 in 1993-94). The Department of Education estimates a cumulative effect of these reductions as a $9,565 per student loss to public school funding, which would be offset by "real savings" (approximately $4,500) from not having these students in public schools. This estimate is disputed by some, who argue that the "cumulative effect" cannot be specified because it depends on how many public school students leave the system, and that the only definitive statement that can be made is that for each student attending a private scholarship-redeeming school, the net amount of the Proposition 98 total guarantee would be reduced by the scholarship amount.

Every time an existing private school student or a student who has never been in the public schools chooses to redeem a scholarship, the Department of Education indicates that public school funding would be reduced by $4,994. This is the amount of the state's obligation to fund public schools (per pupil) under Proposition 98.

In 1992-93, there were 538,000 pupils enrolled in private schools of at least 25 students who would be eligible for scholarships in 1995-96. According to estimates by the Department of Education, starting in 1995-96, the cost of issuing scholarships for those pupils would total $1.35 billion (538,000 pupils x $2,497 each).

In addition to this new cost of $1.35 billion, $2.7 billion would have to be counted in satisfaction of Proposition 98 funding formulas based on enrollment (538,000 x $4,994). Public schools would lose $2.7 billion, private schools would receive $1.35 billion in scholarships and the state would experience $1.35 billion in savings. This amount, however, could continue to be spent on public schools, but could also be redirected to other public needs of the state, depending on the Legislature's action.

It is apparent that, even if not a single public school student chose to move to a private school, the state would eventually be paying for an additional half million students with money that public schools are now receiving.

Calculation of Scholarship Amount

According to the California Department of Education, assuming a K-12 enrollment of 5,195,777 students and school expenses of $4,994 per pupil or $25,946,271,000 in 1992-93, the minimum scholarship amount would equal $2,497, or approximately $2,500 per student.

The initiative requires that the scholarship value for each student shall be equal to "at least 50 percent of the average amount of state and local government spending per public school student for education in kindergarten and grades one through 12 during the preceding fiscal year, calculated on a statewide basis, including every cost to the state, school districts, and county offices of education of maintaining kindergarten and elementary and secondary education..."

State and local government spending, as defined by the initiative, "includes, but is not limited to, spending funded from all revenue sources, including the General Fund, federal funds, local property taxes, lottery funds, and local miscellaneous income such as developer fees, but excluding bond proceeds and charitable donations."

For purposes of determining the amount of the scholarship or voucher, state and local government spending would also exclude expenditures for any unfunded pension liability, presumably teacher retirement, and would also exclude expenditures on scholarships granted by the initiative. The exclusion of scholarship expenditures from the calculation of state and local government spending is critical because this will have the effect of reducing required minimum levels of per-pupil spending over time, and consequently will reduce the minimum scholarship value over time as more students leave the public school system to be supported on scholarships.

The wording of the initiative also appears to exclude the costs of preschool, child development and adult education from the calculation of state and local government spending.

While the initiative does include federal funds in the calculation of the scholarship amount, it specifies that federal funds "shall constitute no part of any scholarship." According to the initiative sponsors, this requirement was added so that scholarships would not carry additional federal requirements for scholarship-redeeming schools. This could also avoid outright conflict with the U.S. Constitution. (See Legal Issues on page 21).

A child is defined by the initiative as "an individual eligible to attend kindergarten or grades one through 12 in the public school system" for purposes of calculating the scholarship amount and for eligibility for the scholarship. A student is defined as "a child attending school." This definition appears to exclude children enrolled in preschool and child development programs and adult students enrolled in special education and adult education programs.

Chart 1 shows the Department of Education's calculation of the amount of the scholarship for each student.

Chart 1

CALCULATION OF SCHOLARSHIP AMOUNT

	1992-93 Revenues
State General Fund	$ 15,836,084,000
Lottery	557,737,000
Other State Funds (inc. bonds)	2,672,385,000
Federal Funds	2,163,234,000
Property taxes	6,726,265,000
Other Local Funds	2,345,987,000 *
Subtotal	$ 30,301,692,000
Less STRS** state contribution	$ - 629,272,000
Less Adult Education	- 533,356,000 #
Less Child Development	- 605,531,000 #
Less bond proceeds	- 2,587,262,000 #
Net public school expense	$ 25,946,271,000
1992 Head-count enrollment (K-12 est.)	5,195,777
Per Pupil Expense	$ 4,994
Minimum Voucher (50%)	$ 2,497

* Estimated by the Department of Education
** State Teachers Retirement System
\# Local contribution in each of these exclusions is estimated

(Source: California Department of Education)

Scholarship Savings and Proposition 98

The initiative identifies scholarship savings, in addition to the actual scholarship expenditures associated with each student who enrolls in a scholarship-redeeming school. Paragraph (8) of subdivision (b) of the initiative states:

"Expenditures for scholarships issued under this section and savings resulting from the implementation of this section shall count toward the minimum funding requirements for education established by Sections 8 and 8.5 of Article XVI [Proposition 98]."

"Savings" are defined to mean the difference between scholarship costs ($2,497) and the defined per-pupil expense ($4,994). Therefore, in addition to scholarship costs of approximately $2,500 generated by each student enrolled in a scholarship-redeeming school, each student will also generate scholarship savings of another $2,500. In its analysis of the initiative, the Department of Education explains the negative impact on public school funding:

"Since both scholarship costs and 'savings' are to be counted towards meeting the Proposition 98 guarantee, the initiative would give the state credit for spending $4,994 ($2,497 of scholarship and $2,497 of savings) for each student attending a scholarship-redeeming school. The state could actually spend as little as $2,497 for the scholarship and be relieved of the obligation to spend $4,994 in the public schools."

The inititive does not make clear whether these savings would automatically revert to the state as savings or whether these funds could be redirected for other purposes inside K-12 education, but the Legislature could make this determination.

Both scholarship expenditures and scholarship savings would count toward the minimum funding requirements for education under Proposition 98. However, student enrollment in scholarship-redeeming schools would not count toward enrollment in public schools for purposes of Proposition 98.

In effect, state funds for public schools are reduced by the initiative for the students they no longer serve. The public schools will not receive funds for scholarship students, but they will not have to provide services for these students, either. However, without any reimbursement for the costs of scholarships and scholarship savings for students attending scholarship-

redeeming schools, these costs constitute unfunded costs to the public schools under the initiative.

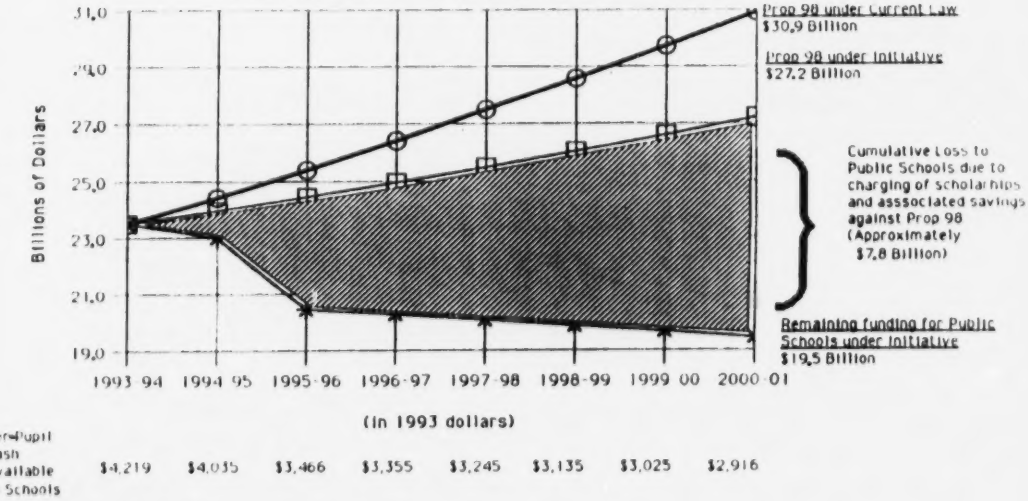
Long-Term Impact

In the first year of implementation, the state could lose $4,571 per pupil in required Proposition 98 funding. (The loss of $4,571 per pupil differs from the $4,994 per-pupil expense of education because the definitions of per-pupil funding under Proposition 98 and per-pupil expense under this initiative differ.) The California Department of Education estimates that actual "cash" per public school student could fall from $4,571 per student in 1992-93 to $3,245 in 1997-98, reducing the value of the scholarship over time. This depends on the action of the Legislature, since it could augment public school funding to mitigate this effect.

Chart 2 illustrates the potential impact of the initiative over time, as interpreted by the Department of Education. This chart also assumes that the Legislature will not appropriate additional funds to cover the costs of the initiative and to maintain required levels of per-pupil funding.

Chart 2

POTENTIAL IMPACT OF CHOICE INITIATIVE OVER TIME
AS EXPRESSED IN TERMS OF STATE AND LOCAL FUNDING FOR SCHOOLS
Assuming 4% Annual Public School Enrollment Growth
2% Annual Departure of Students to Private Schools
100% of Eligible Private School Students Claim Scholarships



Source: California Department of Education

Supplemental Funding for Scholarship-Redeeming Schools

The initiative permits the Legislature to award supplemental funds for "reasonable transportation needs for low-income children and special needs attributable to physical impairment or learning disability." This provision would allow existing categorical funds for transportation and special education to be provided to eligible students attending scholarship-redeeming schools.

However, existing transportation funding would probably not be sufficient to allow parents to send their children to schools not in their neighborhood. In any case, the Legislature is not required to provide this supplemental funding, but is allowed to provide it.

It is not clear whether the Legislature would be limited under the initiative to supplemental funding for transportation for low-income students and special needs of learning disabled and physically disabled students. For example, the Legislature may wish to expand supplemental assistance to other disabled students not specified by the initiative or to limited-English-proficient students.

School Facilities Issues

Any reduction in student enrollment growth to public schools would relieve pressure on California's significantly overcrowded public schools. If the initiative passed and student enrollment growth dropped from 4 percent to 2 percent a year, the need for raising additional state funds for school facilities could be reduced.

Implementation Costs

The California Department of Education estimates that it would cost the state several million dollars annually to manage the disbursement of scholarship payments to schools in accordance with the initiative. The initiative requires the payment of vouchers directly to the scholarship-redeeming school on a monthly basis and "within 30 days of receipt of the school's statement of current enrollment."

The initiative does not specify which state agency would handle this function or if such a function could be contracted out to a non-state agency. This could be specified by the Legislature.

OTHER PROVISIONS

Student Testing

The initiative states that "the State Board of Education may require each public school and each scholarship-redeeming school to choose and administer tests reflecting national standards for the purpose of measuring individual academic improvements." The state board is not directed to select the tests which should be used. The state's new testing program, while partially implemented and partially in development, could form some part of the board's options.

Payment of Scholarships

The initiative requires that scholarships must be paid monthly by the state within 30 days after a school claims enrollment. The Legislature would have to provide a mechanism for this timely payment. This would change the current apportionment process from the three apportionments which occur annually and which are disbursed to school districts, not individual schools.

Tax Status of Scholarships or Vouchers

While specifying that the "scholarships shall not constitute taxable income," this language may not exempt scholarships from federal taxation.

LEGAL ISSUES

General Provisions

The initiative specifies that a legal challenge to any provision of the initiative must be commenced within six months from the date of the election at which it is approved. Otherwise all of the provisions shall be held "valid, legal, and uncontestable." This provision does not preclude a legal challenge to the application of the initiative "to a particular person or circumstance."

A "severability" clause of the initiative further provides that if any provision of the initiative is invalidated, the remaining provisions remain in force.

Legal challenges to any new regulation of private schools imposed by voters in any city, county, local district or subdivision of the state would place the burden of proof on the governmental body that proposed the regulation. The governing body would have to establish that the regulation is essential to assure the health and safety of students, that there is a compelling interest (in the case of a land-use regulation), and that it would not harass or unduly burden private schools or parents.

The initiative provides that the Legislature may enact civil and criminal penalties for fraudulent solicitation of students or redemption of scholarships. The Legislature could also prohibit anyone convicted of a felony, any offense involving lewd or lascivious conduct, or child abuse or molestation, from being associated with any school, public or private.

The implementation date of the initiative could come as early as the November 1993 election, which would fall within the 1993-94 fiscal year, when the first scholarships could be claimed. They would have to be paid within 30 days.

State and Federal Constitutional and Statutory Issues

The initiative specifies that the state would send redemption payments directly to the private schools, including sectarian schools that are scholarship-redeeming schools, even though the scholarships are deemed "grants of aid" to children through their parents. These payments may raise a constitutional issue of direct public aid to religion, which is prohibited under the California Constitution, Article IX, Section 8, and Article XVI, Section 5, but this would have to be tested in the courts if a challenge were made.

It is unclear whether the differences in school funding that may result from the initiative will affect school funding equalization as required by Serrano v. Priest, or other more recent court cases, such as Crawford v. Board of Education of the City of Los Angeles and Rodriguez v. Los Angeles Unified School District.

Legal issues may arise surrounding the requirement for approval by a majority of registered voters, not those voting, to amend private school regulations within a local jurisdiction. This represents a greater obstacle than already exists for local ballot measures, which usually require approval of a majority or two-thirds of those voting.

By not specifically prohibiting discrimination by scholarship-redeeming schools on the basis of religion, gender, or disability, the initiative does not expressly allow discrimination, but could raise the question of conflict with state and federal law such as the Civil Rights Act and Government Code Section 11135, which prohibit state funding to any grantee that practices such discrimination.

Other questions about possible discrimination might arise in the case of students who are dismissed from school for deriving "no substantial academic benefit." There may be potential conflict with the federal Individuals with Educational Disabilities Act and Section 504 of the federal Rehabilitation Act. The initiative does not change whatever legal protections or remedies currently exist.

The California School Boards Association, in its 1992 report, California's 1992 Voucher Initiative, includes a thorough analysis of legal and constitutional issues related to this initiative, for those interested in more detail.

The Department of Education identified several issues that remain to be clarified by the courts. The courts may be asked to decide:

- Whether scholarship-redeeming public schools can accept tuition vouchers under the free schools clause of the California Constitution.

- Whether the scholarship constitutes "direct aid to religion" under the California Constitution or violates the First Amendment to the U.S. Constitution.

- Whether the scholarship is federally taxable as income.
- Whether the initiative's failure to prohibit discrimination based on gender, religion or disability conflicts with state and federal law.
- Whether the scholarship is a gift of public funds to private schools and therefore prohibited under the California Constitution.

ROLE OF THE LEGISLATURE, SCHOOL DISTRICTS, AND STATE BOARD IN IMPLEMENTING THE INITIATIVE

Unresolved Issues Requiring Follow-up Action

If passed, the initiative will require legislation in order to be implemented effectively. It states, "The Legislature shall implement this section through legislation consistent with the purposes and provisions of this section." Many unresolved or unclear issues could be clarified in this way. Other questions remain for local school boards, the state Board of Education, or the courts to answer.

The following is a list of the implementation issues which the Legislature, local school districts, the state Board of Education, and the courts could face if the initiative is passed.

The Legislature will need to:

- Set the value of the scholarship/voucher and decide if the value will be different for different grade levels.
- Decide whether per-pupil funding should be kept constant or augmented.
- Decide whether to subsidize transportation costs.
- Decide whether to finance special education costs in addition to the scholarships.
- Provide for cash payment of scholarship costs within 30 days of claims being filed.
- Establish a means of pro-rating scholarships for those who change schools within the school year.
- Establish a way to keep track of scholarships, scholarship-redeeming schools and unused scholarship values for students.
- Impose such regulations on private schools as are essential and can be passed by a three-fourths vote of the Legislature.

- Enact regulations to prevent fraud and the employment in scholarship-redeeming schools of felons or persons convicted of child abuse.

- Provide for enforcement of the initiative's requirement that scholarship-redeeming schools be prohibited from discriminating on the basis of race or ethnicity, advocating unlawful behavior, falsely advertising or teaching hatred.

- Decide whether to extend scholarships to home schooling situations with less than 25 students.

- Establish a process by which public schools may become independent scholarship-redeeming schools and decide whether they may receive both vouchers and public school funding.

School districts (local governing boards) will need to:

- Establish procedures and policies that allocate all enrollment slots based upon parent choice, consistent with federal law.

- Revise budgets, enrollment estimates and facilities plans to reflect the impact of the initiative on enrollment and fiscal matters.

The state Board of Education will need to:

- Enact regulations as necessary for implementation of the initiative.

The state Board of Education may need to:

- Identify a student-testing program for all schools, calibrated to national norms.

SUPPORT/OPPOSITION ARGUMENTS

The California School Boards Association report on this initiative summarized supporting and opposing arguments that will form the basis of expensive and vigorous campaigns for and against the initiative. Below is a brief summary of these arguments.

Support

Proponents of the voucher initiative argue that it:

Reduces the Ills of Monopoly

The current school system is a monopoly that makes all decisions about what will be offered to students with little regard for what parents might find appropriate. There is little diversity in the offerings, and few incentives for change, a situation that does not meet the needs of a diverse student population.

Creates Healthy Competition

Competition from private schools will force public schools to become more responsive to the needs of students and desires of parents or lose students and the funds they generate. If parents are able to shop around for schools, greater variation of instructional methodologies could be fostered.

Promotes Economic Equality

A voucher that is of equal value for all students is inherently fair to all students, and could resolve the issue of unequal pupil funding. Parents of low-income students would be able to send their children to private schools.

Eliminates Double Payments

Parents who pay private tuition would no longer have to make a "double payment" of tuition in addition to the taxes they pay to support public education.

Reduces the Burden on Sectarian and Private Schools

Non-public schools will not have to rely as heavily on financial support from religious organizations, fund raisers or affluent parents if vouchers cover almost the entire cost of education.

Establishes a Simplistic Funding Scheme

The current funding system is complex, and requires extensive regulations and several levels of bureaucracy, which would be greatly simplified by the voucher system.

Reduces Bureaucracy and Overhead

The voucher system of funding students directly might make much of the state, regional and school district bureaucracy unnecessary. The requirement of a three-fourths vote of the Legislature would limit any burdensome regulation.

Stimulates Human Enthusiasm and Commitment

Teachers who become key program developers in a voucher system will have a vested interest and professional pride in the success of their programs. Parental empowerment and involvement will be stimulated and increased.

Promotes Shared Values

Parents will be able to choose schools for their children which develop the values and talents which those parents regard highly.

Encourages Private Innovation and Diversity

Innovation and diversity in local schools will be encouraged by the competition which the vouchers will bring, more effectively preparing students for the future.

Opposition

Opponents of the voucher initiative argue that it:

Undermines the Public School System

The overall per-student distribution of educational dollars will be reduced as more and more students redeem scholarships or vouchers. Public schools will be left with only hard-to-educate students as private schools attract and admit the best and brightest. Parents, when given a choice, will select their child's school based on proximity to home or workplace, rather than the type or quality of programs offered. A potential loss of involvement from middle-class parents could be harmful to public schools.

May Discriminate in Admission Policies

There are no provisions in the initiative guaranteeing non-discrimination by private schools on the basis of gender, religion, physical disability, or students' academic ability. Even if admitted, low-achieving students may be expelled if not performing at an "acceptable" level.

Provides Inferior Services in Low-Income Areas

New private schools will stay away from low-income, high-risk areas with heavy concentrations of health and learning problems. There is no evidence to indicate that students in poor neighborhoods will find new schools responsive to their needs or even affordable.

Unfairly Benefits the Wealthy

Wealthier parents will gain the most from a voucher system because they are more informed and sophisticated shoppers, can afford higher tuition, and have more access to transportation, widening their range of choices.

Facilitates State Support for Religious Instruction

Existing private schools, most of which are church affiliated, will be the most likely to participate in the voucher. An unconstitutional conflict of church and state will result from supporting religious instruction with public dollars.

Increases Costs to an Unknown Degree

Substantial costs are certain to accrue for this new voucher system, but it is difficult to anticipate true conditions and costs. The potential for abuse is very great in a system of private enterprise, and some monitoring will be required.

Does Not Assign Administrative and Fiscal Accountability

There is no clear designation of parties responsible for fiscal and administrative accountability and prosecution of abuses. Fiscal issues include the method of accounting for the higher education voucher surplus, payment of vouchers, and tracking of students. Mid-year transfers of students with scholarships will also require tracking.

Increases Information Costs

In order to provide the appropriate level of information about schools for parents to make informed decisions, new procedures and an extensive data base will be needed at unknown cost. Special services will be required for limited-English-speaking parents and others with special needs.

Increases Transportation Costs

If the voucher system is to be effectively implemented, all students must be able to attend the schools of their choice without restriction, which includes meeting transportation needs. The cost of this would be prohibitive, however, even though the initiative says the Legislature may provide additional funds for transportation costs.

Is Based on Inappropriate Comparisons of Private and Public Schools

Comparisons between public and private schools are often unfair. Public schools must by law educate all children, and may not prohibit admission to low-achieving students. Public schools must abide by state laws and regulations, including health and safety standards, which would not apply to private schools under the voucher initiative. The vote required to levy state regulations on public schools is only a simple majority, but a three-fourths vote of the Legislature would be required under the initiative to impose regulations on scholarship-redeeming schools.

Known Positions | **Support**

Bill Allen, former U.S. Civil Rights Commissioner
Alliance of California Taxpayers & Involved Voters
Joseph Alibrandi, Whittaker Corp.
Dean Andal, California State Assembly
Dr. Larry Arnn, Claremont Institute
William J. Bennett, former U.S. Secretary of Education
California Libertarian Party
California Republican Party
Citizens for Excellence in Education, Costa Mesa
Tom Campbell, Stanford University
Mickey Conroy, California State Assembly
Richard J. Dennis, Chicago Resource Center
George Deukmejian, former Governor of California
Robert K. Dornan, U.S. Congress, California
Frank Ellsworth, Ind. Colleges of So. California
Gil Ferguson, California State Assembly
Excellence through Choice in Education League
Malcolm S. Forbes, Jr., Forbes Magazine
Milton Friedman, Nobel Laureate
John Taylor Gatto, Teacher of the Year, New York
Dr. Lois M. Gerber, Nat'l Ind. Private Schools Associaton
Sara DiVito Hardman, Hardman Industries, Inc.
John Herrington, former Dept. of Energy Secretary
Bruce Herschensohn, former KABC Commentator, Los Angeles
Matthew R. Harris, Project Impact
Bill Hoge, California State Assembly
Kevin T. Irvine, Teacher of the Year, Colorado
Dr. Joe Jacobs, Jacobs Engineering Group
David Jorgensen, DQ Alliances
Jack Kemp, Empower America
Bill Leonard, California State Senator
John Lewis, California State Senator
Marin United Taxpayers Association, San Rafael
Tom McClintock, Center for the California Taxpayer
John McGraw, McGraw Insurance
Pat Nolan, California State Assembly
Star Parker, NFTA Publishing
Parents for Educational Choice, San Marcos
People's Advocate, Sacramento
Curt Pringle, California State Assembly
Safi Qureshy, AST Research, Inc.
Dana Rohrabacher, U.S. Congress, California
J. Patrick Rooney, Chairman, Golden Rule Insurance Co.

Michael Rothschild, Bionomics Institute
George P. Shultz, Hoover Institution
Wilbert Smith, Pasadena School District
Dr. Lewis Solman, former Dean, School of Education, UCLA
John Stoos, California Gun Owners Association
Stanley Treitel, Agudath Israel of California
John V. Tunney, former U.S. Senator from California
Polly Williams, State Legislator, Wisconsin
Yolo County Taxpayers Association, Woodland
(And numerous other individuals and organizations)

Oppose

A. Philip Randolph Institute
Academic Senate for California Community Colleges
Alameda Supervisor Mary King
Alameda Supervisor Warren Widener
Albany School District
Alhambra School District
Alicia Rodriguez, President, West San Gabriel Valley League of United Latin American Citizens
Alisal Union School District
American Association of University Women
American Federation of State, County and Municipal Employees
American Jewish Committee - Los Angeles Chapter
American Jewish Congress, Pacific Southwest Region
American Jewish Congress, Northern Pacific Region
Americans United for Separation of Church and State
Anderson Union School District
Anti-Defamation League
Asian and Pacific Americans in Higher Education
Asian Pacific American Coalition
Assembly Member Barbara Lee
Assembly Member Bob Campbell
Former Assembly Member Bruce Bronzan
Assembly Member Byron Sher
Assembly Member Charles Quackenbush
Assembly Member Curtis Tucker, Jr.
Assembly Member Dan Hauser
Assembly Member Delaine Eastin
Assembly Member Gwen Moore
Assembly Member Jack O'Connell
Assembly Member Jackie Speier
Assembly Member Jim Costa

Assembly Member Marguerite Archie-Hudson
Assembly Member Phil Isenberg
Assembly Member Richard Polanco
Assembly Member Rusty Areias
Assembly Member Steve Peace
Assembly Member Teresa Hughes
Assembly Member Terry Freidman
Assembly Member Tom Bates
Assembly Member Willard Murray
Assembly Speaker Willie Brown
Association of California Community College Administrators
Association of California School Administrators
Association of California Urban School Districts
Association of Mexican-American Educators
Auburn Union Elementary School District
Benicia Unified School District
Berkeley Unified School District
Black American Political Association of California
Black Butte Union Elementary School District
Black Oak Mine Unified School District
Black Women's Corp.
Brea Olinda Unified School District
Butte County Board of Education
California Association for the Education of Young Children
California Association for Persons with Handicaps
California Associaton of School Psychologists
California Association of School Business Officials
California Association of Resource Specialists
California Citizen Action
California Community College Trustees
California Continuation Education Association
California Council for Adult Education
California Council of United Auto Workers - Retirees
California Democratic Party
California Education Support Personnel/National Education Assoc.
California Faculty Association
California Federation of Teachers
California Labor Federation, AFL-CIO
California League of Middle Schools
California Legislative Council for Older Americans
California Media and Library Education Association
California National Organization for Women
California School Boards Association
California School Employees Association

California School Personnel Commissioners Association
California Special Education Local Plan Area Administrators
California Speech and Hearing Association
California State Employees Association
California State Police Association, Inc.
California State PTA
California Student Association of Community Colleges
California Teachers Association
Carlsbad Unified School District
Carmel Unified School District
Castro Valley Unified School Disrict
Chicano Correctional Workers Assocation, Los Angeles Chapter
Chicano Federation
Chief Executive Officers of California Community Colleges
Chinese for Affirmative Action
Chualar Union School District
Coalition of California Welfare Organizations
Coalition of Medical Providers
Coleman Advocates for Children and Youth
Comision Femenil de Los Angeles
Committee to Protect the Political Rights of Minorities
Communications Workers of America
Community College Association of the CTA
Community College Council of the California Teachers Federation
Community College League of California
Community Partners for Educational Excellence
Compton Councilmember Bernice Woods
Compton Councilmember Evelyn Wells
Compton Councilmember Patricia Moore
Compton Unified School District
Congressman Matthew Martinez
Consumer Federation of California
Contra Costa County Board of Education
Council for Exceptional Children
Cuddeback Union Elementary School District
David Lopez, Trustee, Los Angeles Community College District
Dr. Frank Alderete, Los Angeles County Board of Education
Dublin Unified School District
Escalon Unified School District
Faculty Association of California Community Colleges
Forestville Union School District
Future Leadership Political Action Committee
Garvey School District
Gary Bray, Superintendent, Edison Elem. School, Kern County
Glendora Unified School District

Gonzales Union High School District
Gonzales Union School District
Gray Panthers of Greater Los Angeles
Greenfield Union School District
Hartnell Community College District
Hawthorne School District
Hayward Unified School District
Hispanic Coalition on Higher Education
Hispanic Women's Council
Hospital and Service Employees Union, Local 399, SEIU
Howard Owens, President, Congress of California Seniors
Ignacio Rojas, Director of Parent Center, Los Angeles County Office of Education
Igo, Ono, Platina Union Elementary School District
Jackie Goldberg, former Los Angeles School Boards Association
Jewish Federation Council of Greater Los Angeles, Jewish Community Relations Committee
Joe A. Duardo, past-President, California School Boards Assn.
Kent Wong, Chairman, Alliance of Asian Pacific Labor
King City Joint Union High School District
Laborers International Union of North America
Lake Elsinore Unified School District
Latino Legislative Caucus
Legislative Black Caucus
Lincoln Unified School District
Live Oak School District
Los Angeles Councilmember Mike Woo
Los Angeles Councilmember Nate Holden
Los Angeles Councilmember Mike Hernandez
Los Angeles Councilmember Rita Walters
Los Angeles Councilmember Mark Ridley Thomas
Los Angeles Unified School District
Manteca School District
Mexican American Legal Defense and Educational Fund
Mexican American Political Association, Los Angeles Metropolitan Region
Migrant Education Program
Moe Stavnezer, President, Los Angeles League of Conservation Voters
Montebello Unified School District
Monterey Park Councilmember Alfred Balderama
Monterey Peninsula Unified School District
Morgan Hill Unified School District
Mother Lode Union School District
Mountain View Chamber of Commerce

Mt. Diablo Unified School District
Nadine Potter, Trustee, East Side Union High School District
Napa Valley School District
National Association for the Advancement of Colored People - Region 1
National City School District
National Council of Jewish Women
Newport-Mesa Unified School District
Nil Hul, Executive Director, Cambodian Assoc. of America
North Monterey County Unified School District
Norwalk-La Mirada Unified School District
Oakland Mayor, Elihu Harris
Oakland Unified School District
Ocean View School District
Older Women's League, San Francisco Chapter
Pacific Grove Unified School District
Palm Springs Unified School District
Panama-Buena Vista Union School District
Paramount Unified School District
Pearle Woodall, President, Franklin McKinley School District
Penryn Elementary School District
People for the American Way
Piedmont Unified School District
Pittsburg Unified School District
Placerville Union Elementary School District
Pomona School District
Public Employees Union, Local 1
Rabbi Allen I. Freehling, Ph.D., D.D., Reformed Jewish Activist
Rabbi Steven B. Jacobs, Encino
Raza Administrators and Counselors of Higher Education
Richmond Mayor George Livingston
Rio Hondo College, Board of Trustees
Robert Viramontes, Boardmember, Baldwin Park Unified School District
Ron Raya, Superintendent, Bonita Unified School District
Roseville Unified School District
Sacramento City Unified School District, Board of Education
Sacramento Supervisor Grantland Johnson
Salinas City School District
San Antonio School District
San Antonio Union School District
San Ardo Union School District
San Diego Unified School District, Board of Education
San Franciscans Unified

San Francisco City Attorney, Louise Renne
San Francisco Supervisor Willie Kennedy
San Francisco Supervisor Doris Ward
San Francisco Supervisor Terance Hallinan
San Gabriel Elementary School District
San Jose Unified School District
San Ramon Valley Unified School District
Sanger Unified School District
Santa Monica City Councilmember Tony Vazquez
Senate President pro Tempore David Roberti
Sequoia Union High School District
Service Employees International Union
Service Employees International Union, Local 660
Shasta Lake Union School District
Social Action Commission, Southern California Board of Rabbis
Solano County Office of Education
Solano Supervisor Osby Davis
Soquel Elementary School District
South Pasadena Unified School District
Special Education Coalition
Spreckles Union School District
State Controller Gray Davis
State Senator Alfred Alquist
State Senator Art Torres
State Senator Dan Boatwright
State Senator Diane Watson
State Senator Gary Hart
State Senator Henry Mello
State Senator Lucy Killea
State Senator Mike Thompson
State Senator Milton Marks
State Senator Ralph Dills
State Senator Ruben Ayala
State Senator Wadie Deddeh
Sunnyvale Elementary School District
Thai Association of Southern California
The Rainbow Coalition
The Reverend Jesse Jackson
Torrence Unified School District
Tuolumne County Board of Education
Unified Vietnamese Community Council
United Teachers of Los Angeles
Upland Unified School District
Vacaville Unified School District

Vallejo City Unified School District
Walnut Creek Elementary School District
West Valley Democratic Club
Whisman Elementary School District
Willows Unified School District
Women For:
Women's American Organization for Rehabilitation Through Training

APPENDIX

[This draft incorporates technical amendments.]

November 19, 1991

THE PARENTAL CHOICE IN EDUCATION INITIATIVE

The following Section, the "Parental Choice in Education Amendment," is hereby added to Article IX of the California Constitution:

Section 17. Purpose. The people of California, desiring to improve the quality of education available to all children, adopt this Section to: (1) enable parents to determine which schools best meet their children's needs; (2) empower parents to send their children to such schools; (3) establish academic accountability based on national standards; (4) reduce bureaucracy so that more educational dollars reach the classroom; (5) provide greater opportunities for teachers; and (6) mobilize the private sector to help accommodate our burgeoning school-age population.

Therefore: All parents are hereby empowered to choose any school, public or private, for the education of their children, as provided in this Section.

(a) **Empowerment of Parents; Granting of Scholarships.** The State shall annually provide a scholarship to every resident school-age child. Scholarships may be redeemed by the child's parent at any scholarship-redeeming school.

(1) The scholarship value for each child shall be at least fifty percent of the average amount of State and local government spending per public school student for education in kindergarten and grades one through twelve during the preceding fiscal year, calculated on a statewide basis, including every cost to the State, school districts, and county offices of education of maintaining kindergarten and elementary and secondary education, but excluding expenditures on scholarships granted pursuant to this Section and excluding any unfunded pension liability associated with the public school system.

(2) Scholarship value shall be equal for every child in any given grade. In case of student transfer, the scholarship shall be prorated. The Legislature may award supplemental funds for reasonable transportation needs for low-income children and special needs attributable to physical impairment or learning disability. Nothing in this Section shall prevent the use in any school of supplemental assistance from any source, public or private.

(3) If the scholarship amount exceeds the charges imposed by a scholarship-redeeming school for any year in which the student is in attendance,

the surplus shall become a credit held in trust by the state for the student for later application toward charges at any scholarship-redeeming school or any institution of higher education in California, public or private, which meets the requirements imposed on scholarship-redeeming schools in Section 17(b)(1) and (3). Any surplus remaining on the student's twenty-sixth birthday shall revert to the state treasury.

(4) Scholarships provided hereunder are grants of aid to children through their parents and not to the schools in which the children are enrolled. Such scholarships shall not constitute taxable income. The parent shall be free to choose any scholarship-redeeming school, and such selection shall not constitute a decision or act of the State or any of its subdivisions. No other provision of this Constitution shall prevent the implementation of this Section.

(5) Children enrolled in private schools on October 1, 1991, shall receive scholarships, if otherwise eligible, beginning with the 1995-96 fiscal year. All other children shall receive scholarships beginning with the 1993-94 fiscal year.

(6) The State Board of Education may require each public school and each scholarship-redeeming school to choose and administer tests reflecting national standards for the purpose of measuring individual academic improvement. Such tests shall be designed and scored by independent parties. Each school's composite results for each grade level shall be released to the public. Individual results shall be released only to the school and the child's parent.

(7) Governing boards of school districts shall establish a mechanism consistent with federal law to allocate enrollment capacity based primarily on parental choice. Any public school which chooses not to redeem scholarships shall, after district enrollment assignments based primarily on parental choice are complete, open its remaining enrollment capacity to children regardless of residence. For fiscal purposes, children shall be deemed residents of the school district in which they are enrolled.

(8) No child shall receive any scholarship under this Section or any credit under Section 17(a)(3) for any fiscal year in which the child enrolls in a non-scholarship-redeeming school, unless the Legislature provides otherwise.

(b) **Empowerment of Schools; Redemption of Scholarships.** A private school may become a scholarship-redeeming school by filing with the State Board of Education a statement indicating satisfaction of the legal requirements which applied to private schools on October 1, 1991, and the requirements of this Section.

(1) No school which discriminates on the basis of race, ethnicity, color, or national origin may redeem scholarships.

(2) To the extent permitted by this Constitution and the Constitution of the United States, the State shall prevent from redeeming scholarships any school which advocates unlawful behavior; teaches hatred of any person or group on the basis of race, ethnicity, color, national origin, religion, or gender; or deliberately provides false or misleading information respecting the school.

(3) No school with fewer than 25 students may redeem scholarships, unless the Legislature provides otherwise.

(4) Private schools, regardless of size, shall be accorded maximum flexibility to educate their students and shall be free from unnecessary, burdensome, or onerous regulation. No regulation of private schools, scholarship-redeeming or not, beyond that required by this Section and that which applied to private schools on October 1, 1991, shall be issued or enacted, unless approved by a three-fourths vote of the Legislature or, alternatively, as to any regulation pertaining to health, safety, or land use imposed by any county, city, district, or other subdivision of the State, a two-thirds vote of the governmental body issuing or enacting the regulation and a majority vote of qualified electors within the affected jurisdiction. In any legal proceeding challenging such a regulation as inconsistent with this Section, the governmental body issuing or enacting it shall have the burden of establishing that the regulation: (A) is essential to assure the health, safety, or education of students, or, as to any land use regulation, that the governmental body has a compelling interest in issuing or enacting it; (B) does not unduly burden or impede private schools or the parents of students therein; and (C) will not harass, injure, or suppress private schools.

(5) Notwithstanding Section 17(b)(4), the Legislature may (A) enact civil and criminal penalties for schools and persons who engage in fraudulent conduct in connection with the solicitation of students or the redemption of scholarships, and (B) restrict or prohibit individuals convicted of (i) any felony, (ii) any offense involving lewd or lascivious conduct, or (iii) any offense involving molestation or other abuse of a child, from owning, contracting with, or being employed by any school, public or private.

(6) Any school, public or private, may establish a code of conduct and discipline and enforce it with sanctions, including dismissal. A student who is deriving no substantial academic benefit or is responsible for serious or habitual misconduct related to the school may be dismissed.

(7) After the parent designates the enrolling school, the State shall disburse the student's scholarship funds, excepting funds held in trust pursuant to

Section 17(a)(3), in equal amounts monthly, directly to the school for credit to the parent's account. Monthly disbursals shall occur within 30 days of receipt of the school's statement of current enrollment.

(8) Expenditures for scholarships issued under this Section and savings resulting from the implementation of this Section shall count toward the minimum funding requirements for education established by Sections 8 and 8.5 of Article XVI. Students enrolled in scholarship-redeeming schools shall not be counted toward enrollment in public schools and community colleges for purposes of Sections 8 and 8.5 of Article XVI.

(c) **Empowerment of Teachers; Conversion of Schools.** Within one year after the people adopt this Section, the Legislature shall establish an expeditious process by which public schools may become independent scholarship-redeeming schools. Such schools shall be common schools under this Article, and Section 6 of this Article shall not limit their formation.

(1) Except as otherwise required by this Constitution and the Constitution of the United States, such schools shall operate under laws and regulations no more restrictive than those applicable to private schools under Section 17(b).

(2) Employees of such schools shall be permitted to continue and transfer their pension and health care programs on the same terms as other similarly situated participants employed by their school district so long as they remain in the employ of any such school.

(d) **Definitions.**

(1) "Charges" include tuition and fees for books, supplies, and other educational costs.

(2) A "child" is an individual eligible to attend kindergarten or grades one through twelve in the public school system.

(3) A "parent" is any person having legal or effective custody of a child.

(4) "Qualified electors" are persons registered to vote, whether or not they vote in any particular election. The alternative requirement in Section 17(b)(4) of approval by a majority vote of qualified electors within the affected jurisdiction shall be imposed only to the extent permitted by this Constitution and the Constitution of the United States.

(5) The Legislature may establish reasonable standards for determining the "residency" of children.

(6) "Savings resulting from the implementation of this Section" in each fiscal year shall be the total amount disbursed for scholarships during that fiscal year subtracted from the product of (A) the average enrollment in scholarship-redeeming schools during that fiscal year multiplied by (B) the average amount of State and local government spending per public school student for education in kindergarten and grades one through twelve, calculated on a statewide basis, during that fiscal year.

(7) A "scholarship-redeeming school" is any school, public or private, located within California, which meets the requirements of this Section. No school shall be compelled to become a scholarship-redeeming school. No school which meets the requirements of this Section shall be prevented from becoming a scholarship-redeeming school.

(8) "State and local government spending" in Section 17(a)(1) includes, but is not limited to, spending funded from all revenue sources, including the General Fund, federal funds, local property taxes, lottery funds, and local miscellaneous income such as developer fees, but excluding bond proceeds and charitable donations. Notwithstanding the inclusion of federal funds in the calculation of "state and local government spending," federal funds shall constitute no part of any scholarship provided under this Section.

(9) A "student" is a child attending school.

(e) **Implementation.** The Legislature shall implement this Section through legislation consistent with the purposes and provisions of this Section.

(f) **Limitation of actions.** Any action or proceeding contesting the validity of (1) this Section, (2) any provision of this Section, or (3) the adoption of this Section, shall be commenced within six months from the date of the election at which this Section is approved; otherwise this Section and all of its provisions shall be held valid, legal, and uncontestable. However, this limitation shall not of itself preclude an action or proceeding to challenge the application of this Section or any of its provisions to a particular person or circumstance.

(g) **Severability.** If any provision of this Section or the application thereof to any person or circumstance is held invalid, the remaining provisions or applications shall remain in force. To this end the provisions of this Section are severable.

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